

A G R E E M E N T

This agreement (the "Agreement") is made and entered into effective as of this 5th day of January 2016 by and between the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section (hereinafter referred to as either the "Department" or the "Animal Welfare Section"), and the Yancey County Humane Society North Animal Shelter, located at 962 Cane River School Road, Burnsville, North Carolina 28714, an agency of Yancey County Humane Society, North Carolina (hereinafter referred to as the "Yancey County Humane Society Animal Shelter" or the "Shelter").

R E C I T A L S

WHEREAS, on December 11, 2015, the Department assessed the Yancey County Humane Society Animal Shelter a civil penalty in the amount of One Thousand, Two Hundred Dollars (\$1,200.00) as a result of the Department's discovery of evidence indicating that the Shelter had violated North Carolina General Statute § 19A-32.1(a) and 02 North Carolina Administrative Code 52J .0101(5) and .0209(5); and

WHEREAS, on December 11, 2015, the Department issued the Yancey County Humane Society Animal Shelter a written Civil Penalty Assessment which, among other things, described in detail the evidence referred to in the preceding paragraph of this Agreement; and

WHEREAS, a true and correct copy of the December 11, 2015 written Civil Penalty Assessment is attached hereto as Exhibit 1 and is incorporated by reference in this Agreement; and

WHEREAS, the Yancey County Humane Society Animal Shelter disputes certain aspects of the December 11, 2015 written Civil Penalty Assessment; and

WHEREAS, the Yancey County Humane Society Animal Shelter has the right to contest the December 8, 2015 written Civil Penalty Assessment by filing a petition for a contested case hearing in the North Carolina Office of Administrative Hearings; and

WHEREAS, the parties recognize that litigating the December 11, 2015 written Civil Penalty Assessment would be expensive and time-consuming; and

WHEREAS, the Yancey County Humane Society Animal Shelter and the Department desire to fully and finally compromise and settle this and all other disputes and controversies between them involving the Department's December 11, 2015 assessment of a civil penalty against the Yancey County Humane Society Animal Shelter; and

WHEREAS, the Yancey County Humane Society Animal Shelter and the Department desire to enter into such a compromise and settlement solely in order to avoid the burden and expense of litigation.

NOW THEREFORE, for and in consideration of, among other things, the promises contained herein, the representations, covenants and warranties contained herein, the obligations created hereby and the release(s) contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Department and the Yancey County Humane Society Animal Shelter agree as follows:

1. The Recitals set forth above in this Agreement are hereby incorporated into this Agreement by reference as if fully set forth herein.

2. The Yancey County Humane Society Animal Shelter has developed and submitted to the Animal Welfare Section written proposed policies and procedures detailing a program to ensure compliance with the minimum holding period required by N. C. General Statute §19A-32.1. The Yancey County Humane Society Animal Shelter has also developed and submitted to the Animal Welfare Section written proposed policies and procedures detailing the isolation of ill animals, proper signage of isolation areas and the keeping of proper medication logs. These policies and procedures are attached as Exhibit 2.

3. The Director of the Animal Welfare Section has approved the written policies and procedures attached as Exhibit 2 to this Agreement.

4. The Yancey County Humane Society Animal Shelter agrees to implement and abide by these policies and procedures in the operation of the shelter. The Yancey County Humane Society agrees, beginning no later than thirty (30) calendar days after the date this Agreement is signed by the Yancey County Humane Society Animal Shelter, to provide training to every Yancey County Humane Society Animal Shelter staff member concerning the policies and procedures attached as Exhibit 2 to this Agreement. The Yancey County Humane Society Animal Shelter agrees to provide documentation of this training and the names of all training participants and attendees to the Animal Welfare Section within 14 days of the completion of the training.

5. By no later than February 26, 2016, the Yancey County Humane Society Animal Shelter shall pay the Department the sum of six hundred dollars (\$600.00).

6. The persons signing this Agreement below represent and warrant that they have full authority and representative capacity to execute this Agreement in the capacities indicated below, and that this Agreement constitutes the valid and binding obligations of all parties.

7. The parties agree to act in good faith in the implementation of this Agreement.
8. The parties agree to bear their own attorneys' fees and costs associated with this Agreement and with the matters referred to in this Agreement.
9. The parties acknowledge that this Agreement contains the entire agreement between them regarding the matters set forth and described in it, and that it supersedes all previous negotiations, discussions and understandings between them regarding such matters.
10. The terms of this Agreement are contractual and not a mere recital, and may be modified only in a writing executed by all signatories hereto.
11. The parties acknowledge and agree that any and all disputes arising out of or under this Agreement, whether sounding in contract, tort or otherwise and including, among all others, the validity, construction, interpretation and enforcement of this Agreement, shall be governed by North Carolina law. Despite the foregoing, the parties further acknowledge and agree that this Agreement shall not be interpreted in favor of or against any party based upon which party drafted or participated in drafting this Agreement.
12. If any of the provisions of this Agreement are later determined to be invalid or unenforceable by a court of competent jurisdiction, the provisions found to be invalid or unenforceable shall be treated as being severable from the other provisions of this Agreement and this Agreement shall be construed and enforced as if any such invalid or unenforceable provision(s) had not been included in the Agreement.
13. This Agreement shall be binding in perpetuity upon and shall inure to the benefit of the parties, their agents, officers, employees, successors, assigns, heirs, executors and administrators.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and signed as of the day and year indicated by their signatures below:

THE NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES,
VETERINARY DIVISION, ANIMAL WELFARE
SECTION

By:  _____

Patricia Norris, DVM MS
Director, Animal Welfare Section, North Carolina
Department of Agriculture and Consumer Services

Date: 2/18/2014

THE YANCEY COUNTY HUMANE SOCIETY,
NORTH CAROLINA ANIMAL SERVICES
SHELTER

By: Renee Tomberlin

Renee Tomberlin

County Manager, Yancey County Humane Society,
North Carolina

Date: 2/13/16

Exhibit 1

**(December 11, 2015 Written Notice of Civil Penalty
Assessment)**



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

December 11, 2015

Renee Tomberlin
Shelter Director
Yancey County Humane Society
962 Cane River School Road
Burnsville, NC 28714

NOTICE OF CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF N. C. GENERAL STATUTE §19A-32.1(a) and TITLE 02 N. C. ADMINISTRATIVE CODE, CHAPTER 52J, SECTIONS .0101(5) and .0209(5).

Facility: Yancey County Humane Society Animal Shelter

Dear Ms. Tomberlin:

Pursuant to N. C. General Statute § 19A-40 I am issuing this notice to you that the Yancey County Humane Society is assessed a civil penalty of \$1200.00 as provided in the enclosed Notice of Violations.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N. C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to N. C. General Statute § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may present your offer to me. I can be contacted by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Patricia Norris', with a stylized flourish at the end.

Patricia Norris, DVM
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, NCDA&CS
Tina Hlabse, General Counsel, NCDA&CS
Joe Reardon, Assistant Commissioner, NCDA&CS

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF

YANCEY COUNTY HUMANE SOCIETY

ANIMAL SHELTER

) NOTICE OF VIOLATIONS
) ASSESSMENT OF CIVIL PENALTY
) FOR VIOLATIONS OF N. C. GENERAL
) STATUTE §19A-32.1(a) and 02 NCAC
) 52J .0101(5) and .0209(5)
)

Acting pursuant to N.C. Gen. Stat. § 19A-30, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. On October 27 and 28, 2015, AWS received complaints concerning the Yancey County Humane Society Animal Shelter ("the shelter").
2. AWS opened an investigation and on November 10, 2015, AWS Animal Health Technician Joshua James ("Inspector James") conducted a site visit of the shelter. As part of the site visit, Inspector James conducted staff interviews and a records review.
3. The investigation and interviews with the shelter staff revealed the following:
 - a) At the time of the site visit, no cats or kittens were showing signs of illness;
 - b) On October 27, 2105, the shelter director was removed from his position and an interim director was hired;
 - c) No medication logs for treatments prior to October 27, 2015 could be located by the current staff;
 - d) During their interviews, staff who were present during the time period mentioned in the complaint attested that there was an outbreak of disease in one of the communal rooms that lasted less than 30 days;
 - e) Staff members indicated that it is standard procedure for animals showing signs of communicable disease to be moved into the isolation areas, but in this case, as all of the animals were deemed to have been exposed, the entire room was quarantined. The room was closed to new intakes and all exposed animals were placed on medications for upper respiratory infections; and
 - f) The staff indicated that the windows of this communal room were covered during the quarantine period, but signage giving notice of a communicable disease was not posted.
4. The review of the shelter records revealed:
 - a) 12 kittens were found dead in their kennel/enclosure between June 1, 2015 and November 10, 2015; and
 - b) 6 stray cats were euthanized prior to the end of the 72 hour minimum holding period.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Norris', with a stylized flourish at the end.

Patricia Norris, DVM
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, NCDA&CS
Tina Hlabse, General Counsel, NCDA&CS
Joe Reardon, Assistant Commissioner, NCDA&CS

Appendix

RELEVANT LAWS AND REGULATIONS

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

§ 19A-32.1. Minimum holding period for animals in animal shelters; public viewing of animals in animal shelters; disposition of animals.

(a) Except as otherwise provided in this section, all animals received by an animal shelter or by an agent of an animal shelter shall be held for a minimum holding period of 72 hours, or for any longer minimum period established by a board of county commissioners, prior to being euthanized or otherwise disposed of.

02 NCAC 52J .0101 RECORDS; ANIMAL SHELTERS, ETC.

Operators of all animal shelters, pet shops, public auctions, and dealers shall maintain records on all dogs and cats showing the following:

(5) record of veterinary care including treatments, immunization and date, time, description of medication (including name and dosage), and initials of person administering any product or procedure.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0209 CLASSIFICATION AND SEPARATION

Animals housed in the same primary enclosure shall be maintained in compatible groups, with the following additional restrictions:

(5) All facilities shall designate an isolation area for animals being treated or observed for communicable diseases. Dogs or cats in isolation that are being treated for a communicable disease shall be separated from other dogs or cats and other susceptible species of animals in such a manner as to minimize dissemination of such disease. A sign shall be posted at the cage or isolation area when in use, giving notice of a communicable disease.

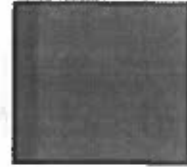
History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005.

Exhibit 2

**(Policies and Procedures Submitted by Yancey County
Humane Society Animal Shelter, January 5, 2016 with
Revised Medication Log Submitted January 21, 2016)**

YANCEY HUMANE SOCIETY

P.O. Box 1016
Burnsville, NC 28714
828-682-9510
vchs@ccvn.com



January 5, 2016

North Carolina Department of Agriculture
And Consumer Services
Veterinary Division

1030 Mail Service Center
Raleigh, NC 27699-1030

Att: Patricia Norris, DVM
Director, Animal Welfare Division

Re: Notice of Civil Penalty

Dear Dr. Norris,

Thank you for your time and patience with our agency and with me in particular regarding this matter.

As you know, I have received and read the letter of December 11, 2015 outlining the issues and the civil penalties. I feel we have taken the appropriate steps to correct these deficiencies and would like to enter into a settlement agreement to mitigate the civil penalty.

The deficiencies as noted were:

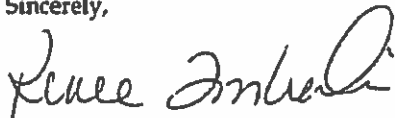
- 1) *Lack of proper signage indicating a communicable disease in the kitten sick room.* Enclosed you will find the page from the new policies and procedures manual which I am currently developing regarding this issue. There is a placard on the door of the isolation feline room and I have directed the staff to always place sick cats and kittens in this room in the future. This room has a bank of stainless steel kennels. As a general rule we will no longer treat an entire feline room in the adoption hallway. In the case of an extreme emergency, and if there is no other option and we do have to treat an entire room, the room will be closed to all persons except one staff member who will clean, medicate and care for that room. The storm door will be covered and proper signage will be posted on that door. Again, we will only do those when all isolation kennels are full and only to prevent unnecessary euthanasia.



- 2) *Medication Logs were not kept after completion.* Again, this issue is addressed on the pages from the policies and procedures manual in development. Medication logs have always been kept, but unfortunately were not filed once they were turned into the director by kennel staff. Our new policy is that the logs, once medication is completed, are given to the kennel manager who transcribes the information on to the individual medical records of the animal. The logs are then given to the director for filing. Logs will be kept for a minimum of one year. A sample of a medication log is included in this correspondence.
- 3) *72- hour minimum holding period was violated.* I have included a copy of the move-up table that we are now using for all animals moving from intake to adoption or euthanasia. These will become part of the policies and procedures manual and are posted at the entrance to the intake areas for canines and felines. We have chosen to go beyond the 72- hour rule for canines and will be using a 72 "open hours" rule in order to increase the possibility of owners reuniting with lost canines. We will use the 72- hours from time of intake rule for felines since, in our experience, the majority of our feline intake is stray or feral. Instructions on how to safely handle feral cats during this period are posted on this chart.

I hope this adequately addresses the concerns and hope that we can work together to insure there are no further issues. I can be reached at any time at 828-776-1845 or at the shelter at 828-682-9510 after noon every day except Sunday and Wednesday.

Sincerely,



Renee Tomberlin, Director

Yancey Humane Society

MOVE UP TABLE FOR ALL CATS AND KITTENS IN INTAKE

Note: All cats and kittens must be held for 72 hours from the time they came into the shelter. This does not have to be "business days." If a feral cat is too dangerous to move from kennel to kennel, you can leave it in the kennel and just make sure it has plenty of food and water. If you can safely remove the litter box for cleaning, do so. If a cat or kitten is severely injured or suffering, let the director know and a decision can be made about euthanasia. Never make that decision alone!

CAME IN:

MOVE UP/EUTHANIZE:

MONDAY

THURSDAY

TUESDAY

FRIDAY

THURSDAY

SUNDAY

FRIDAY

MONDAY

SATURDAY

TUESDAY

Renee Imherlin, Director

MOVE UP TABLE FOR ALL CANINES IN INTAKE

Note: We will continue to use the 3 “business/open” days for dogs. The following table will apply. However, please check with the director before moving up young puppies. We will typically keep them in intake until they have had at least 2 series of shots and are old enough for their spay/neuter.

CAME IN:

MOVE UP:

MONDAY

SATURDAY

TUESDAY

MONDAY

WEDNESDAY

MONDAY

THURSDAY

TUESDAY

FRIDAY

THURSDAY

SATURDAY

FRIDAY

SUNDAY

FRIDAY

Renee Imberlin, Director

PROCEDURES FOR SICK ANIMALS

ALL SICK ANIMALS SHALL BE IMMEDIATELY ISOLATED FROM THE GENERAL POPULATION! KENNEL TECHS ARE ALWAYS ALLOWED TO MOVE AN ANIMAL TO ISOLATION WITHOUT MANAGEMENT APPROVAL. HOWEVER, ANIMALS SHOULD NOT BE MOVED BACK INTO GENERAL POPULATION WITHOUT THE DIRECTOR'S APPROVAL.

ALL MEDICATIONS WILL BE PRESCRIBED AND DISTRIBUTED ONLY WITH THE DIRECTOR'S APPROVAL.

DOGS:

SICK DOGS ARE TO BE KENNELED IN THE DOG ISOLATION AREA AND THEIR NAMES AND DIAGNOSES SHOULD BE CLEARLY LABELED ON THE WHITE BOARD IN THE ISO AREA. THE DOOR TO THE ISOLATION AREA SHOULD BE SHUT AT ALL TIMES AND NO ONE SHOULD USE THE STORM DOOR BETWEEN INTAKE AND ISOLATION WHEN DOGS ARE KENNELED IN THE ISO AREA.

MEDICAL LOGS ARE TO BE KEPT IN THE PREP ROOM ON THE CLIPBOARD WHEN ACTIVE AND SHOULD BE GIVEN TO THE KENNEL MANAGER FOR TRANSCRIPTION ON TO INDIVIDUAL ANIMAL MEDICAL RECORDS WHEN COMPLETE. KENNEL MANAGER WILL THEN GIVE MEDICAL LOGS TO DIRECTOR FOR CENTRAL FILING. LOGS WILL BE KEPT FOR A MINIMUM OF 2 YEARS.

CATS:

ALL SICK CATS WILL BE KENNELED IN THE ISOLATION KENNELS. THE DOOR TO THE ISOLATION ROOM SHOULD BE KEPT CLOSED AT ALL TIMES. CATS SHOULD NOT SHARE A KENNEL UNLESS THERE IS ABSOLUTELY NO OTHER ROOM. IN THIS SITUATION, MAKE EVERY EFFORT TO BE SURE THAT CATS ARE OF THE SAME APPROXIMATE AGE AND THAT THEIR LEVEL OF SICKNESS IS AS SIMILAR AS POSSIBLE. MEDICAL LOGS ARE TO BE KEPT FOR EACH INDIVIDUAL CAT/KITTEN AND SHOULD BE GIVEN TO THE KENNEL MANAGER FOR TRANSCRIPTION ON TO INDIVIDUAL MEDICAL RECORDS WHEN COMPLETE. KENNEL MANAGER WILL THEN GIVE MEDICAL LOGS TO DIRECTOR FOR CENTRAL FILING. RECORDS WILL BE KEPT FOR A MINIMUM OF 2 YEARS.

IF IT BECOMES NECESSARY TO TREAT AN ENTIRE ROOM SUCH AS THE THIRD KITTEN ROOM, THEN THE ROOM SHALL BE CLOSED TO ALL ACCESS OTHER THAN STAFF WHEN CLEANING AND GIVING MEDICATION. A SIGN INDICATING THAT THE ROOM IS BEING TREATED SHALL BE POSTED ON THE DOOR AND CLEARLY STATE THAT THE ROOM IS QUARANTINED AND THAT NO ADMITTANCE IS ALLOWED. THIS SHOULD BE A LAST RESORT AND USED ONLY WHEN THE STAINLESS ISOLATION KENNELS ARE COMPLETELY FULL.

SIGNED: _____

Renee Imbriani, Director

Medication Log

[illegible]

Medication Log

[illegible]